CHAPTER 6

MANDATORY DETENTION IN PRACTICE

6.1 Following the previous chapter's consideration of the background and evolution of the policy of mandatory detention, this chapter focuses on the conditions of detention and treatment of detainees in Australian immigration detention centres. Under domestic law the Commonwealth and private contractors involved in the delivery of detention services owe a duty of care to detainees. As noted in Chapter 5, international standards also apply to the detainees, including non nationals in immigration detention.[1]

6.2 Evidence to this inquiry raised concerns in relation to eight matters, which are listed below:

- The use of detainee labour
- Penal approach to immigration detention
- Allegations of mistreatment
- Access to detainees by lawyers, health professionals and other visitors
- Health standards and medical care of detainees
- Mental health care
- Poor food
- Detention costs

6.3 The chapter concludes with a discussion of proposals for alternative approaches to mandatory detention.

The use of detainee labour

6.4 The use of detainees to perform tasks that would normally be undertaken by employees of GSL or its subcontractors is relevant to the concerns expressed by the Social Justice Committee of the Conference of Leaders of Religious Institutes (NSW). The Committee was informed that detainees may voluntarily undertake work which is related to the normal functioning of the centre. Detainees are awarded the equivalent of $1 per hour of value under a merit point system, which may be spent in the cafeteria on confectionary, tobacco or phone cards or other personal items.[2]

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1 See for example, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN GA Resolution 43/173, 9 December 1988.

2 *Committee Hansard* 8 November, 2005, pp 11-14.

6.5 The committee notes that during a visit to Villawood there were only two paid workers and 17 detainees working in the kitchen.[3] DIMA and GSL were questioned on the prevalence of this practice. The Committee also sought information on:

- how many detainees are engaged in work within detention centres; and
- whether there are explicit obligations contained in the contract, which require a minimum level of staffing to be provided by GSL.

6.6 DIMA advised that

> The provision of the 'merits point' system is required under the contract between DIMA and GSL. It is administered by GSL and operates within a framework agreed by the Department. This includes an operational procedure which addresses the practical implementation of the merits point system.[4]

6.7 The committee is aware that GSL is prohibited from employing detainees but must provide 'meaningful activity'. Nevertheless, the committee is concerned that work normally performed by paid employees is being carried out by detainees for minimal reward. In this context the practice offers an obvious financial benefit to the contractor and subcontractors.

6.8 Media reports indicate that an asylum seeker, at the Villawood IDF, has initiated proceedings in the Federal Court, seeking an injunction to stop DIMA, GSL and Delaware North Companies Australia Pty Ltd from employing detainees under the merit system claiming that it has no legitimate basis in law.[5] The argument in that case is that work is not undertaken on a voluntary basis because detainees have:

> … no choice but to work, because visitors could not bring them more than $10 a visit, there was no ATM within the detention centre to withdraw their own money and the federal Government charged detainees about $130 a day to stay there.[6]

6.9 The committee also received further evidence from Thea Birss, Principal Solicitor for Refugee Advocacy Service of South Australia (RASSA) concerning the use of the merit point system at Baxter IDF:

> We referred Senator Ludwig's query to DIMA staff at the Baxter IDF but have received no response to date. We are advised by a former detainee recently released that GSL received the money detainees paid to send faxes. Faxes, like photocopying cost around $1 per page. This money was paid on a points system as cash is not allowed in Baxter IDF.

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3 *Committee Hansard* 8 November 2005, p. 12.

4 Response to Question on Notice given 11 October, 2005.

5 Natasha Robinson, Detainee arguing 'slave labour' case, *Australian*, 6 December 2005, p. 3.

6 Natasha Robinson, Detainee arguing 'slave labour' case, *Australian*, 6 December 2005, p. 3.

> Detainees were required to pay upfront and even if faxes were urgent or addressed to lawyers they would not be sent if a detainee has insufficient points. In 2005 a complaint was brought to the managers of DIMA and GSL at Baxter about a detainee being unable to send a fax to his lawyer because he had insufficient points and they confirmed GSL's position that he was not permitted to send the fax.[7]

6.10 Detainee labour raises an important public issue. In the context of detention, where detainees are dependent on centre management and have little or no access to cash, the merit point system is open to abuse. The committee is concerned that exploitative practices have been allowed to develop.

6.11 Among the issues that need to be addressed is the number of hours worked; the level of remuneration and the health and safety of detainees when performing such labour. During hearings DIMA agreed that there was no specific limit to the number of hours of work that could be performed and no specific standards relating to detainee labour but general standards relating to the dignity of the person would apply.[8] DIMA subsequently advised that:

> the Meaningful Activities program at each detention centre is managed by GSL. Like all other activities there is a regular audit. Audits cover areas such as:
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> - suitability of the activities made available through the program;
> - detainee access to the program;
> - the allocation and redemption of 'merit points' by detainees; and
> - training and OHS issues arising from detainees participating in the program.
>
> Any issues arising from these audits are raised directly with GSL to ensure that they are addressed.
>
> DIMA would also use the complaints process in a positive way to identify any potential concerns in this area. This could include complaints to the Office of the Ombudsman, Members of Parliament and the Office of the Human Rights Commissioner.[9]

6.12 In light of the systemic problems in the oversight of the contract and the Immigration Detention Standards, the committee finds no comfort in DIMA's response. While involvement in meaningful activity is crucially important to the health and wellbeing of detainees, work related activity is not a substitute for a structured activity program

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7 RASSA, Response to Question on Notice given 26 September, 2005, p. 2.

8 *Committee Hansard* 8 November 2005, p. 14.

9 Response to Question on Notice given on 11 October 2005.

6.13 The committee is also extremely concerned about the level of voluntariness of those participating in work related activity. Forced labour is prohibited under international law. In the prison context exemptions which apply to criminal detainees, expressly prohibit compulsory labour for the benefit of private individuals, companies even where a public authority has legal oversight.[10] The use of detainee labour in private prisons for activities related to running the facility remains prohibited and is a controversial in the international arena. Immigration detainees are equally vulnerable to exploitation and warrant no less protection.

6.14 In addition, access to the outside world, particularly to lawyers and therefore to the court, is a fundamental human right. Impeding access to the outside world is likely to place Australia in breach of its international human rights obligations and warrants independent investigation.

Recommendation 34

6.15 The committee recommends that the use of detainee labour should be subject to independent investigation by the Ombudsman or HREOC and re-examined as part of the review of the immigration detention services contract.

Penal approach to immigration detention

6.16 Some witnesses opposed the use of a company whose core business is security and prison management and, what they regard, as a penal approach to immigration detention.

6.17 It was claimed that staff at detention centres are often ex-prison officers and are not trained appropriately to deal with immigration detainees, in particular detained asylum seekers. It was also argued that personnel frequently lack the necessary understanding of the trauma many detainees have suffered, the psychological impact of these experiences and the effects of detention. This has often unnecessarily led to detainees becoming frustrated, agitated and on some occasions aggressive.[11] The Torture and Trauma Assistance and Rehabilitation Service (STTARS) told the Committee that:

> Detention centre staff have little experience of, or training in, recognising or working with mental disorders and can be unsympathetic and unskilled in their management strategies. When disorders manifest the custodial response is to manage the behaviour by placing the individual in isolation under surveillance which in turn often exacerbates the problem.[12]

10 ILO Convention 29, Article 4(1).

11 Ms Margaret McGregor, *Submission 20*, p. 1; FECCA, *Submission 101*, pp. 5-6; Ms Rosalind Berry, *Submission 137*, pp 6-7.

12 STTARS, *Submission 138,* pp 3-4.

6.18 Frustration and conflict was also attributed to the lack of understanding of cultural difference by detention staff. In relation to Baxter, the Palmer Inquiry found many instances of poor communication and cultural approaches to communication being misinterpreted, creating unnecessary misunderstanding.[13] The Federation of Ethnic Communities' Council of Australia (FECCA) considered the lack of cultural understanding a particular problem. They said that:

> It is vitally important that there be clear guidelines and protocols for management of detention centres that ensures that human rights are upheld, that people be treated with compassion and concern for their physical, emotional, spiritual and psychological welfare.[14]

6.19 The committee was told that the emphasis on security means the environment of detention centres is very similar to a correctional facility and practices often reflected those used in prisons and detainees were often seen as trouble-makers.[15] Certain practices were regarded as inappropriate and unnecessary and often the source of considerable distress to detainees. Some of the practices referred to include detainees being required to sleep with lights on, waking detainees at night to check on them and failure to take into account cultural issues, particularly in relation to women.[16]

6.20 The committee was concerned by evidence about the use of behaviour management techniques. Dr Newman told the Committee:

> We have been particularly concerned about the misuse, in our opinion, of so called behavioural principles, largely because those principles and practice have in some cases been used in a punitive way – merely for the purpose of maintaining behavioural control, with the fundamental problem of a lack of understanding of the reasons behind disturbed behaviour… The fundamental problem, particularly in the behaviour management unit Red 1 in Baxter, is the way that simplistic psychological models are applied to really complex and very disturbed people which, in effect, means that those people are potentially made worse by the treatment they receive.[17]

6.21 In a similar vein Dr Jureidini said:

> The fact that they are labelled as behaviour management strategies gives them some kind of credence. It is an extremely punitive program. The program talks specifically about rewards; there are no rewards. People have

13 Mr M. Palmer, *Report on the Inquiry into the Circumstances of the Immigration Detention of Cornelia Raur*, 6 July 2005, p. 7.

14 FECCA, *Submission 101*, p. 6.

15 Mr Bert and Mrs Christine Fabel, *Submission 54*, p.1; Ms Gwen Gorman, *Submission 136*, p. 1.

16 FECCA, *Submission 101*, p. 6; Brotherhood of St Laurence, *Submission 175*, p. 4.

17 *Committee Hansard* , 27 September 2005, p. 21.

> absolutely everything taken away from them and then gradually get some of it given back. It is at times almost a sadistic mentality.[18]

6.22 The RASSA said that 'management units' are in effect isolation cells which have been used to punish detainees and should be abolished. They described the Management Unit at Baxter in the following terms:

> The Management Unit is about 3 metres square, contains a mattress and no other furniture. Fixed upon the wall is a closed circuit TV camera which observes and records the inmate's movements at all times. The cell is always lit. There is no view of anything outside the room. There is a small frosted window up high which lets in some light. In the past detainees have been confined to their cell for more than 23 hours in each day. [19]

6.23 The Palmer Report describes the Management Unit as being comprised '10 single rooms, each with a door, a window, toilet and shower facilities and a mattress. Detainees are permitted limited periods in outside courtyards.'[20]

6.24 The committee notes that the processes, procedures and practices of Red One behaviour management compound and the Management Unit at Baxter Immigration Detention Facility are listed as an area of concern previously raised by the Commonwealth Ombudsman with DIMA.[21] DIMA advised that the operational procedures were developed in consultation with the Ombudsman Office. Nevertheless, evidence given by Dr Newman suggests grounds for continuing concern about the use of restrictive detention, particularly its appropriateness where a person may be suffering mental disorder. The fact that the majority of detainees do not experience Red One does not lessen the importance of those concerns.

6.25 A Just Australia complained that 'behaviour modification' is unregulated:

> This regime is a prime example of the unregulated nature of conditions within the overall migration detention regime. It is hard to find any lawful basis for allowing detention officers employed by a private company the power to arbitrarily impose the punishments of separation and isolation on people who have never been charged nor found guilty of any offence. The use of isolation and separation, its legal and welfare ramifications, needs to be investigated by an independent judicial body.[22]

6.26 Mr Burnside QC also criticised the lack of a clear legal basis for the use of a further deprivation of liberty:

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18 *Committee Hansard*, 26 September 2005, p. 40.

19 RASSA, *Submission 51*, pp 6-7.

20 Mr M. Palmer, *Report on the Inquiry into the Circumstances of the Immigration Detention of Cornelia Raur*, 6 July 2005, p. 59.

21 Commonwealth Ombudsman, *Submission* 196, p. 2.

22 A Just Australia, *Submission 184*, p. 13.

> … That is the largest problem – the fact that they do not know when, if ever, they are going to be released. Within that context, the use of solitary confinement without any regulation is an additional problem of very grave proportions. I see that the latest MSI looks as though it is addressing the way in which solitary confinement will be used, but, so far as I am aware, there are still no regulations that dictate and restrict the way in which solitary confinement can be used.
>
> That stands in marked contrast to the prison system, where even the worst convicted criminal cannot be put in solitary confinement without a very clearly defined process which is subject to judicial review if misused. It is very hard to see why a private operator of a detention centre should be allowed to put people in solitary confinement without any preconditions at all and, for practical purposes, without any judicial oversight.[23]

6.27 In response to these criticisms DIMA refuted the claim that 'solitary confinement' is used in IDFs but conceded that 'restrictive detention' is and that:

> Unless specific reasons exist, no restrictions are imposed on the detainee's freedom of movement within the compound, on their use of telephone or association with other detainees within the same compound … .
>
> In cases where transfer is being considered due to behavioural concerns, detainees are notified, except in emergencies, of the reasons why they are being considered for transfer and given the opportunity to avoid such a transfer. Where transfer occurs, a care plan agreement may be formulated between the detainee and the Placement Review Team (PRT). The goal of these agreements is to facilitate the detainee's return to general accommodation as quickly as possible. Restrictions are not imposed, and return to general accommodation is not delayed, simply because a detainee declines to participate in such programs or agreements. Rather, the PRT conducts a daily assessment to ensure that no other, more appropriate, alternative placement exists.[24]

6.28 *MSI 403: transfer of detainees within immigration detention facilities* sets out the basic policy and procedure to be used when moving a detainee to 'restrictive detention' or a 'management unit' within a centre. 'Restrictive detention' is described as one aspect of a behaviour management strategy 'which aims to achieve constructive participation by detainees in the daily life of the IDF' and is part of a ' multifaceted approach…which is incentive and progress based'. The strategies listed include:

- behaviour management agreements,
- curfews,
- restrictions of movement to specific areas within the compounds,
- restriction of movement to individual rooms; and

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23 *Committee Hansard*, 27 September 2005, pp 44-45.

24 Response to a Question on Notice, 5 December 2005.

- restriction on the periods of access to specific areas of the IDF.

6.29 If the detainee is placed in restrictive detention the requirement for contact by the DSP case manager is weekly, as opposed to transfers to a management support unit or self harm unit which require daily contact.[25]

6.30 The committee also notes that MSI 403 envisages that limitations on a person's communication with other detainees and the outside world may occur in certain circumstances. Paragraph 3.4.40 states that a behaviour management agreement should be specific to the individual and include, among other things, 'access to amenities and visitors'.[26]

Committee view

6.31 The core issue is whether the use of 'behavioural management techniques' is appropriate in a non-punitive administrative detention environment and requires further investigation. The use of these practices without clear legal authority is also a matter of concern. There is wide discretion left to centre management as to the reasons, duration and conditions of restrictive detention and minimum standards and procedural rights are not directly enforceable. Nor is there any regular independent administrative or judicial oversight built into the system as a protection from abuse of power.

6.32 The committee considers that the unregulated use of segregation and restrictive detention for disciplinary purposes has no place in a non-punitive administrative detention environment. Strict regulation of the use of separation detention is essential and should only be permitted where it is necessary to protect the life of the detainee or is strictly necessary to protect the safety of others. In these circumstances, the minimum level of segregation necessary to achieve that objective and for the shortest possible time should the guiding principle.

6.33 The mental health needs of detainees and the use of behaviour management techniques is discussed further below.

Recommendation 35

6.34 The committee recommends that the use of behavioural management techniques and restrictive detention be re-examined as part of the government's proposed review of the immigration detention contract. The committee further recommends that HREOC and the Royal Australia and New Zealand College of Psychiatrists and other stakeholders be consulted during the process.

25 *MSI 403 Transfer of detainees within immigration detention facilities,* para. 3.4.34.

26 *MSI 403 Transfer of detainees within immigration detention facilities.*

Recommendation 36

6.35 The committee recommends that the 'management units' be closed. In the alternative, their use should be limited for short periods not exceeding twenty-four hours in cases of emergency.

Recommendation 37

6.36 The committee recommends that all measures which constitute a further deprivation of liberty within a detention centre be established by law, the grounds and procedural guidelines should be specified and procedural safeguards enforceable in the general courts.

Allegations of mistreatment

6.37 The committee is particularly concerned by allegations that detainees have been abused by detention staff.

6.38 Mrs D Lascaris, a visitor to Baxter Detention Centre for nearly two years, referred to two examples. The first concerned an alleged assault by '8 guards' which resulted in the detainee being hospitalised for two days in Port Augusta hospital. The alleged assault had not been reported as the detainee not only feared reprisal from detention centre staff but also feared that it could adversely affect his appeals which were still pending. The second case involved an allegation that a nurse from Glenside hospital had reported that the detainees had felt intimidated by the 'GSL guards' stationed outside the ward, who they claimed had previously 'bashed them with batons'.[27]

6.39 Several witnesses attested to a culture of impunity within detention centres. For example, Mr Jamal A Daoud described the atmosphere based on his experience of visiting detainees:

> … there is a deep feeling among detention authorities, officials and workers that they have an absolute mandate to do whatever they wish, with no real prospect of losing anything, been [sic] disciplined or ending up in courts for any reason or acts they may commit. During my regular visits to Villawood, this was very clear. On many occasions I (or other Australian citizen visitors) threatened to take actions against security, officials or manager, and we were confronted with the simple answer: do whatever you want… .
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> The workers in these detention centres feel that they are immune from any accountability … There were many reports about security guards accused of mistreating detainees, for whom the government facilitated departure from Australia – presumably to avoid their prosecution here. Some of them went

27 Ms D. Lascaris, *Submission 70*, p. 2.

> to New Zealand, and some of them were even transferred to work in the Nauru detention centre, away from any accountability.[28]

6.40 The committee also notes recent media reporting of an alleged assault by two officers during the reception of a man into Villawood IDF. It was reported that the man sustained a fractured wrist and, although the officers were reported to the police, the men were suspended for three months but the matter was 'dropped' after the detainee was deported. The article suggested that no further disciplinary action was taken because GSL had failed to train the staff – in breach of the contractual obligation to do so.[29]

6.41 A Just Australia also expressed concern about:

> … the number of allegations of serious abuse, assault and breaches of duty of care made by people within the detention environment. Yet in the face of these numerous serious allegations, not one major complaint has been upheld. Conversely, many detained people have been found guilty of major and minor behavioural infractions, resulting in penalties from isolation and segregation within the migration detention centres, up to prison terms. It is difficult to accept that every single allegation made by detainees is unfounded. This therefore makes it difficult to accept that the Department is the proper oversight body for conditions in migration detention centres.[30]

Committee view

6.42 The committee is concerned about the reluctance to use existing complaint mechanisms, which suggests a systemic weakness in accountability arrangements. Cases of alleged corruption, intimidation and abuse of power raise significant issues concerning the supervision and accountability of detention centre staff. It is the responsibility of centre management to ensure that staff are properly trained and supervised and disciplinary procedures are implemented. It is a matter of particular concern if conduct that is likely to constitute a criminal offence has not been reported to police authorities for investigation**.** The forthcoming review of the detention services contract should examine and recommend concrete steps to combat criminal activity and the culture of impunity. The internal complaint processes should be reviewed and the adequacy of mechanisms for confidential complaints and protection from victimisation examined.

6.43 The committee also notes that amendments to the *Migration Act 1958* on 30 November 2005 now enable the Ombudsman to contact an immigration detainee where that person has not made a complaint to the Ombudsman. However, no comparable provision was made to permit HREOC a similar role, although HREOC is

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28 Jamal A Daoud, *Submission 85*, p. 3.

29 Elizabeth Wynhausen, 'At the mercy of private guards', *Weekend Australian*, 11 June 2005, p. 22.

30 A Just Australia, *Submission 184*, p. 13.

the Commonwealth body with a specific human rights jurisdiction. A system of regular official visits by an independent complaints body should be instituted. The committee considers that this function is best shared and performed cooperatively by HREOC and the Commonwealth Ombudsman.

Recommendation 38

6.44 The committee recommends that the forthcoming review of the detention services contract include specific examination of internal complaint processes including, among other things, mechanisms for confidential complaints and protection from victimisation.

Recommendation 39

6.45 The committee recommends that the Migration Act be amended to provide HREOC with an express statutory right of access to all places of immigration detention;

Recommendation 40

6.46 The committee recommends that a system of regular official visits by an independent complaints body be instituted and this function be performed cooperatively by HREOC and the Commonwealth Ombudsman.

Access to detainees by lawyers, health professionals and other visitors

6.47 Access to lawyers, health professional and other visitor was a particular area of complaint. The remote location of some IDFs was cited as a significant impediment to access to services. FECCA[31] and the Catholic Migrant Centre[32] advocated the importance of locating IDFs, in or close to, capital cities to ensure asylum seekers have reasonable access to local service providers, community groups, faith representatives and independent legal and migration advice.

6.48 Mr Burnside QC also saw the problem as a systemic one arising from the fact that:

> social worker, migration agents, lawyers and doctors are not allowed … to go there just in case someone needs their help. They can only go there if someone asks for their help. But, by the nature of things, the people who most need their help are probably least able to ask for it. Cornelia Rau is a startling example of exactly that.[33]

31 FECCA, *Submission 101*, p. 3.

32 Catholic Migrant Centre, *Submission 165*, p. 3.

33 *Committee Hansard*,, 27 September, 2005, p. 44.

6.49 The rules on access to a lawyer were criticised as more restrictive than that imposed in prisons. Ms O'Connor, referring to the Cornelia Rau case to illustrate the point, said:

> I do not understand for the life of me why I as a lawyer cannot go into Baxter without an appointment made by the client, a letter from the client saying the area of law that is going to be covered and that they want to instruct me. That was the problem with Cornelia Rau. There were a number of people who were trying to get me to go and see her … I could not get in there without a request from her. She is ill - how is she going to make a request that she needs to see a lawyer? If I want to go to Yatala tomorrow to see someone who has been charged with the Snowtown murders … I can just go and see them. They will not ask me whether that person has asked to see me. They will not ask me what area of law is being covered … This is for someone who has committed the most horrific crimes in South Australia. If I want to go to Baxter, I cannot do that.[34]

6.50 In response, DIMA said that its policies are designed to facilitate access to legal representation wherever possible:

> However, in order to protect privacy of detainee and ensure equal access to resource, there are certain requirements which must be met by lawyers visiting immigration detention facilities.
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> … the Departmental Protocol requires lawyers to produce evidence of their qualifications prior to receiving their initial access to a detention facility. They are also required to establish their identity and provide written evidence to the Detention Service Provider (DSP) that a detainee has requested legal advice from them. Visits by lawyers for non-migration matters are facilitated wherever operationally possible.
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> Prior to meeting with clients, legal representatives can make a request to the Department, seeking permission to bring mobile telephones and lap-top computers into an immigration detention facility.[35]

6.51 Several organisations and individuals who visit detainees also expressed concerns at the attitude of detention centre management and staff towards them. They considered that obstacles had been put in place to either restrict or deny their access to detainees. It was claimed that rules on visits were continually being changed and a lack of communication between detention centre staff often impacts on visitors being able to see detainees.[36] For example, it was reported that following a written request being made as required by the detention centre, permission to visit was cancelled without any explanation.[37] And that restrictions on detainees having access to mobile

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34 *Committee Hansard* , 26 September, 2005, p. 28

35 Response to question on notice, 5 December 2005.

36 Dr Joan Beckwith, *Submission 142*, p. 2.

37 RASSA, *Submission 51*, p. 2.

phones and the limited number of land phone lines available in detention centres, means that access to detainees can be severely curtailed.[38]

6.52 The Hopestreet Urban Compassion also complained about inconsistency and arbitrariness in visiting arrangements:

> On one occasion children were denied access where we had earlier been advised that they would be allowed in. On another occasion visiting hours were different when we arrived to what we were advised over the phone. Similarly different officers had different rules about what could be taken in and varied in their attitudes to visitors. On one occasion a gift for a detainee was held at the security desk for checking. The gift never reached the detainee …[39]

6.53 The committee was particularly concerned about access to patients. When questioned on about access to patients at Baxter IDF, Dr Jon Jureidini told the Committee he had:

> … given up trying to get there in person, having encountered some difficulties nine or 12 months ago. All the work I have done in recent times has been by telelink. I do not know what would happen if I attempted to go and see somebody there again now. I have not tried for some time. The only way I have ever had any access to any detainees over the last year or so is when it has been arranged by a lawyer.
>
> At the last meeting that I was in Baxter for, the operations manager from GSL behaved in a very intimidating and demeaning manner towards me and my team of staff who were there. I have been told on occasions that I could not go and see a particular person, that they did not need expert child psychiatric input, and that they had services in there readily available. After getting knocked back for a while and refused, if there is a way that you can do it that works a bit better, you give up trying to gain access.[40]

6.54 Limitations placed on chaplaincy and other pastoral services in detention centres was another area of concern raised by several witnesses. Despite DIMA having agreed in December 2004 to discuss the issue of pastoral care in detention centres with a committee of the Catholic Church and the National Council of Churches, they have continually declined to meet with the committee despite numerous requests.[41] However, Mr John Ball, Manager, of the National Program on Refugees and Displaced People, Christian Service, National Council of Churches in Australia advised the Committee that 'a number of church and other religious group representatives are meeting with members of the immigration department to look at

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38 Ms Emma Corcoran, *Submission 53*, p. 2; Ms Helen Lewers, *Submission 77*, p. 15.

39 Hopestreet Urban Compassion, *Submission 30*, p. 2; Strathalbyn Circle of Friends 22, *Submission 69*, p. 4.

40 *Committee Hansard*, 26 September 2005, p. 43.

41 Catholic Bishops Committee for Migrants and Refugees, *Submission 73*, p. 8.

the issue of a protocol for religious visitors to detention centres.'[42] The meeting had been arranged for 28 September 2005.

6.55 The committee observes that principles 18 and 19 of the UN Body of Principles for the Protection of All Person under Any Form of Detention apply to immigration detainees:

- Principle 18 requires that a detained person shall be entitled to communicate and consult with his legal counsel; that adequate time and facilities must be allowed and access to counsel must not be delayed, suspended or restricted 'save in exceptional circumstances' that are 'indispensable' to maintain security and good order'.
- Principle 19 requires that a detained person must have the right and shall be given adequate opportunity to communicate with the outside world, subject only to reasonable conditions and restrictions as specified in law or lawful regulations.

6.56 Based on the foregoing evidence the committee considers that practices in Australian IDFs appear to impose unreasonable restrictions on access to lawyers and other visitors, and fall short of acceptable standards. Immigration detention is administrative detention. It is intended to be non-punitive but is designed solely to prevent a person residing unlawfully in Australia and to facilitate removal. Restrictions on access that go beyond those which are unavoidable and inherent to the operation of a centre are not justifiable.

6.57 On this basis, it is unclear why these highly restrictive measures are necessary. DIMA's procedural rules do in fact permit the minimum of access to lawyers, visitors, communications etc, but are the very minimum of the acceptable range. In the Committee's view, DIMA's explanations, pointing to such matters as the protection of detainees' privacy, do not seem very convincing. They seem in fact to be punitive in nature and open to considerable abuse.

Recommendation 41

6.58 The committee recommends that the review of the immigration detention services contract include a review of the Immigration Detention Standards, Migration Series Instructions and Operational Procedures and ensure that rules relating to access to detainees are consistent with international standards.

Recommendation 42

6.59 The committee recommends that the Migration Act be amended to give effective recognition to the right of detainees to have access to lawyers and other visitors, including medical and religious visitors.

42 *Committee Hansard*, 27 September 2005, p. 61.

Recommendation 43

6.60 The committee recommends that restrictions on access to lawyers and other visitors imposed for disciplinary or behavioural management purposes should be expressly prohibited.

Health standards and medical care of detainees

6.61 The health care of detainees, and in particular the mental health of detainees was a major area of concern for a large number of witnesses. The Committee notes that Schedule 2 clause 7.1.1. of the immigration detention contract states:

> The Department expects that detainees should be able to access either in a facility or externally, a level and standard and timeliness of health services, including optical and dental services, broadly consistent with that available in the Australia community, taking into account the special needs of the detainee population.[43]

6.62 The Palmer Inquiry found in that, in relation to Baxter, the operational standards did not discharge the duty of care and, in relation to health care, clause 7.1.1. is fundamentally flawed because 'it does not recognise that the detainee population has specific needs that differentiate it from the broader Australian community. This is particularly the case in relation to mental health care.'[44]

6.63 The NSW Refugee Health Service is funded by the NSW Department of Health to protect and promote the health of refugees. They described the particular health needs of asylum seekers:

> Key health issues for asylum seekers are often similar to those of refugees arriving through the offshore refugee program, and include: psychological distress; dental disease; under-managed chronic conditions (e.g. diabetes, heart disease); exposure to TB and parasites; nutritional problems; and injuries from war and/or torture. Health care needs may therefore be high. Several studies in Australia have demonstrated asylum seekers to be a highly traumatised population with a high prevalence of depression, anxiety and post-traumatic stress disorder, and that such problems are likely to be worsened by their experiences here.[45]

6.64 The evidence in relation to health related matters falls into five main areas of concern:

- medical services are inadequate;

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43 Mr M. Palmer, *Report on the Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, 6 July 2005,p. 68

44 Mr M. Palmer, *Report on the Inquiry into the Circumstances of the Immigration Detention of Cornelia Raur*, 6 July 2005, p. 68.

45 Sydney South West Area Health Service, *Submission 209*, p. 3.

- medical staff are poorly trained to deal with the needs of detainees with disabilities and mental health issues;[46]
- essential medical treatment has been delayed;[47]
- recommended treatment has not been followed;[48] and
- requests for independent medical advice has been refused.[49]

6.65 Many witnesses questioned the quality and appropriateness of health care generally. It was said that the type of medical treatment is often left to nursing staff instead of a doctor which resulted in delays in access to proper medical treatment.[50] Examples provided by witnesses included:

- A Just Australia referred to a case where it was alleged that a detainee who had broken his leg and who had x-rays taken the next day was not taken to hospital for treatment until 3 weeks later.[51]
- Following a minor operation at the Pt Augusta hospital a detainee's wound had become infected for which he was initially offered Panadol. A doctor prescribed antibiotics but these were not provided until two days later after a friend had rung to inquire about his condition.[52]
- The daughter of a detainee, who was wheelchair bound, was not referred to an occupational therapist for treatment during the 9 months that she was held in detention. It was not until she was released from detention with her mother that treatment was arranged through the Red Cross.[53]

6.66 It was argued that even in cases where independent medical advice has been obtained this advice has not always been followed. It was claimed that ex-detainees had advised that 'even if they were successful in gaining a medical check-up by a specialist outside detention, the prescribed medications would not be [bought.']'[54]

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46 Brotherhood of St Laurence, *Submission 175*, p. 4.

47 Mr Ian Knowles, *Submission 118*, p. 8; A Just Australia, *Submission 184*, p. 18.

48 RASSA, *Submission 51*, Appendix B; Ms Kerrie Barry, *Submission 146*, p. 1.

49 RASSA, *Submission 51*, p. 6; STTARS, *Submission 138*, p. 4.

50 Strathalbyn Circle of Friends 22, *Submission 69*, p. 6; St Vincent de Paul Society, *Submission 147*, p. 2.

51 A Just Australia, *Submission 184*, p. 18.

52 Ms Rosalind Berry, *Submission 137*, p. 8.

53 Mr Martin Clutterbuck, Asylum Seekers Resource Centre, *Committee Hansard*, 27 September 2005, p. 69.

54 Mr Jamal A Daoud, *Submission 85*, pp 4-5.

6.67 It was alleged that it is extremely difficult for detainees to obtain proper dental treatment.[55] One witness claimed that detainees have to wait weeks to see a dentist and that it appears the only treatment offered is teeth extraction rather than restorative treatment.[56] The committee was told of an instance where a detainee who suffers from diabetes lost most of his teeth, allegedly as a result of lack of dental care.[57]

6.68 Ms Ruth Graham, who has visited and corresponded with detainees in the Baxter IDF for the past 2 years, advised that detainees are not being referred for dental treatment even though services are available. She said that she had contacted the South Australian Dental Service in Port Augusta to try to expedite treatment for a detainee who had been having on-going pain. The Service had in turn contacted the dentist who she understood provided dental services to detainees under contract. He advised that there were plenty of appointments available but detainees were not being brought to his surgery.[58]

6.69 The NSW Refugee Health Service identified a number of issues based on their experience providing health care services at Villawood IDF and to ex-detainees following their release into the community. These issues include:

- the cost considerations in providing health services to detainees could impact on the level of health care provided;
- confidentiality of medical records do not appear to be assured, with non-health staff having potential access to the records: it was alleged that custodial and management staff had requested details on the pregnancy and HIV status of detainees;
- health staff working in the centre are seen as part of the system, exacerbated by nurses having to wear uniforms similar to that of custodial staff;
- the inability of doctors to act as advocates for their patients which raises a ethical challenge;
- the degree to which informed consent is sought for testing or medical care among a detained population where many individuals have limited English skills is unclear;
- where detainees are hospitalised, the hospital is deemed an 'alternative place of detention' which means guards accompanying the patient at all times and may, and indeed have, forbidden access to visitors and have even been said to monitor access by health staff;

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55 Strathalbyn Circle of Friends 22, *Submission 69*, p. 6; Mr Brian Davies, *Submission 113*, p. 2; Mr Ian Knowles, *Submission 118*, p. 8; St Vincent de Paul Society, *Submission 147*, p. 2.

56 Mrs Jean Jordan, *Submission 18*, p. 4.

57 Ms Rosalind Berry, *Submission 137*, p. 8.

58 Ms Ruth Graham, *Submission 122*, p. 2.

- medical follow up for those released into the community has been poor with no written summaries of the health care provided while in detention and without arrangements being made for follow-up care. This is of particular concern where people have been released on a Bridging Visa as they are not entitled to access Medicare; and
- once released information on a person's whereabouts cannot be obtained due to privacy laws.[59]

6.70 Companion House also commented that there did not appear to be any policy in place about providing detainees with their medical records on their release into the community. Whether medical records are provided appeared to be a matter solely at the discretion of the attending health worker.[60]

Mental health care

6.71 The Committee received a large body of evidence which argued that:

- immigration detention contributes to high levels of mental illness;
- the provision of mental health care is inadequate; and
- the effective treatment of mental disorder cannot take place within the detention environment.[61]

6.72 The consensus view was that 'prolonged, indefinite detention causes psychological harm in an already vulnerable population'.[62] Royal Australia and New Zealand College of Psychiatrists (RANZCP) said that:

> High levels of mental illness will continue to occur as long as immigration policy is implemented in this way. The RANZCP recommends that prolonged detention is replaced with an alternative system, such as community placements, with detention centres used only for brief initial processing.[63]

6.73 It was also stressed that a detention centre is not a mental health facility and that the treatment of mental disorder in a detention centre is therefore inherently flawed, especially where the cause of ill health is attributable in part or in whole to the conditions of detention. Dr Jon Jureidini considered the environment of immigration detention to be 'so toxic that meaningful treatment cannot occur' within a detention centre.[64]

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59 Sydney South West Area Health Service, *Submission 209*, pp 10-11.

60 Companion House, *Submission 141*, p. 5.

61 See for example, Dr Jon Jureidini, *Submission 31*, p. 1; RANZCP, *Submission 108* p. 2

62 Ms Lizz Hutchinson, *Submission 108*, p. 4.

63 Ms Lizz Hutchinson, *Submission 108*, p. 4.

64 Dr Jon Jereidini, *Submission 31*, p. 1.

6.74 A summary of independent research and evidence of the detrimental effects of immigration detention on the mental health of detainees was provided by RANZCP which showed that rates of mental illness including post-traumatic stress disorder, depression, anxiety are very particularly high among people in immigration detention:

> Detention contributes to feelings of anxiety, hopelessness and depression. Sultan and O'Sullivan (2001) report a pattern of psychological reactions among those held in detention for long periods. After an initial period of shock, detainees typically exhibit symptoms of major depressive disorder which worsen over time, and may eventually develop psychotic symptoms such as delusions and hallucinations. These authors surveyed 33 detainees at the Villawood Detention Centre in Sydney, who had been in detention for more than nine months. All but one of these people displayed symptoms of psychological distress at some stage of their detention. 85% had chronic depressive symptoms and around half of the respondents had very severe depression. Seven respondents showed signs of psychosis, including persecutory delusions, ideas of reference, and auditory hallucinations. 65% of respondents had pronounced suicidal ideation. A survey of Tamil asylum seekers found significantly higher levels of mental illness – depression, post-traumatic stress disorder, anxiety, panic and physical symptoms – in those detained at the Maribynong Detention Centre compared with those living in the community (Thompson et al., 1998). In another study describing the psychiatric status of families in an unnamed Australian detention centre (average length of time in detention two years and four months; Steel et al., 2004), all the adult detainees were diagnosed with a major depressive disorder, and a majority with post-traumatic stress disorder. Two adults showed psychotic symptoms, and met criteria for a severe major depressive disorder with psychotic features. Almost all the adults assessed had experienced persistent thoughts of suicide, though none had had suicidal thoughts prior to detention; a third of the adults had harmed themselves.
>
> Many detainees – in particular, those seeking asylum in Australia – have suffered human rights abuses, including torture, in their countries of origin; family members may have disappeared or been murdered, and many are separated from their loved ones as well as their homes and countries. The traumatic histories of this group makes them particularly vulnerable to the effects of further psychological distress. Overall, prolonged detention exacerbates existing psychological distress and precipitates further mental illness.[65]

6.75 STTARS also advised that a survey undertaken over the past 3 years of 264 people released from detention centres on Bridging or Temporary Protection Visas, found that 162 had been assessed as suffering psychological problems which severely interfered with their every day functioning.[66]

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65 RANZCP, *Submission 108*, p. 2.

66 STTARS, *Submission 138*, p. 1.

6.76 A literature survey commissioned by the Senate Select Committee on Mental Health indicates that the deterioration of mental health is attributable to a number of factors in the detention environment – the exposure to violence and traumatic events; racist comments; being handcuffed during transport and denial of food; lack of faith in asylum claim system; indeterminate lengths of stay, seclusion, lack of access to medical care, treatment by detention centre staff and the centre environment.[67] Inadequate mental health care was cited as a significant factor in some studies.[68] The severity of depression was linked to the length of time in detention and, in one study, half the group:

> … had reached what was described as the severe tertiary depressive stage which included psychotic symptoms such as delusions and hallucinations.[69]

6.77 The particular vulnerability of refugees and asylum seekers has long been accepted by the Commonwealth. The National Mental Health Plan 2003-2008, recognises that refugees and asylum seekers are one of the groups at greatest risk of mental illness.[70] The National Mental Health Strategy, which incorporates a number of pre-existing mental health plans, was adopted by the Australian Health Ministers in 2003. The underlying principles of the Strategy include a recognition of the principle of non-discrimination:

> All people in need of mental health care should have access to timely and effective services, irrespective of where they live.[71]

6.78 The National Mental Health Plan in Multicultural Australia also emphasises the importance of access to health care, which entails:

> The ability to reasonably and equitably provide services based on need irrespective of geography, social standing, ethnicity, age, race, level of income or sex.[72]

6.79 Standard 7 of the National Standards for Mental Health Services developed in 1996, based on UN standards designed to protect the rights of people with mental illness, requires the non-discriminatory treatment of people with mental illness and the

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67 See discussion of Steel et al (2004) and Sultan and O'Sullivan (2001) in Lisa A Hornsby, *The illness of Detention: Access to mental health care for refugees residing in immigration detention*, Report prepared for the Senate Select Committee on Mental Health, October, 2005, p. 18.

68 Mares and Jureidini 2004, Sultan and O'Sullivan 2001, Steel et al 2004 and Mares et al 2002 referred to in Lisa A Hornsby, *The illness of Detention,* 2005, ibid, p. 19.

69 Mares and Jureidini 2004; Steel et al 2004; Mares et al 2002 and Zwi et al 2003; Sultan and O'Sullivan 2001 cited in Lisa A Hornsby, *The illness of Detention,* 2005, ibid, p. 19.

70 Lisa A Hornsby, *The illness of Detention,* 2005, ibid, p. 7.

71 Lisa A Hornsby, *The illness of Detention*, 2005, Lisa A Hornsby, *The illness of Detention,* 2005, ibid, p. 7.

72 Commonwealth of Australia, 2004, p.46 quoted in Lisa A Hornsby, *The illness of Detention,* 2005, ibid, p. 11.

delivery of mental health services that are sensitive to the social and cultural values of the consumer.[73]

6.80 It is against this background of empirical evidence and the national policy framework that the committee considered evidence about the adequacy of mental health care in Australian immigration detention centres. RANZCP summed up the situation when it said:

> The current provision of mental health services to people in detention is clearly inadequate. Existing systems do not understand, recognise or respond adequately or appropriately to mental disorder. The recent case of the prolonged detention of Cornelia Rau clearly illustrates this.[74]

6.81 In a recent Federal Court case concerning mental health care of two detainees, Finn J affirmed the Commonwealth's duty to ensure that reasonable care is provided:

> That duty required the Commonwealth to ensure that a level of medical care was made available to them which was reasonably designed to meet their health care needs including psychiatric care. They did not have to settle for a lesser standard of mental health care because they were in immigration detention.
>
> Given the known mental conditions of the applicants, the Commonwealth permitted its contractor to provide an inadequate and, on the evidence, poorly functioning mental health care service to them.[75]

6.82 The committee is also aware that in at least two international cases Australia was found to have acted in violation of articles 7 and 10 of the ICCPR, by continuing detention after the deterioration of mental health was known to the Department.[76] Article 7 prohibits the use of cruel, inhuman or degrading treatment and article 10 imposes a positive obligation to ensure that all detainees are treatment humanely and with respect for the inherent dignity of the person.

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73 Commonwealth of Australian, 2004, p.46 quoted in Lisa A Hornsby, *The illness of Detention,* 2005, ibid, p.12. See also, for example, UN General Assembly Resolution 46/119 *The Protection of persons with mental illness and the improvement of mental health care,* 46th Session, 17 December 1991.

74 RANZCP, *Submission 108*, p. 3.

75 *S v Secretary Department of Immigration and Multicultural and Indigenous Affairs* [2005] FCA 549.

76 *C v Australia* Communication No. 900/1999 UN Doc. CCPR/C/76/D/900/1999 para. 8.4; see also *Madafferi v Australia,* Communication 1011/2002 UN Doc. CCPR/C/81/D/1011/2001, paras. 9.2 and 9.3.

Mental health and children

6.83 Particular concerns were expressed at the effect of detention on the physical, emotional and mental health of children.[77] HREOC referred to the Committee its report *A last resort*, in which it concluded that the Commonwealth was in breach of the Convention on the Rights of the Child (CRC) in that it had, *inter alia*:

- failed to take appropriate measures to protect the safety of children;
- failed to take all appropriate measures to protect their physical health; and
- failed to take all appropriate measures to protect and promote their mental health.[78]

6.84 RANZCP summarised the evidence relating to the particular vulnerability of children to the effects of prolonged detention:

> Parenting capacity and child protection are significantly compromised in the detention environment and rates of depression and post-traumatic stress disorder (PTSD) are high. Children are adversely affected by institutionalisation, witnessing adult distress, parental depression and emotional withdrawal, limited educational and recreational opportunities and isolation (Mares et al., 2002). Children not uncommonly self-harm, a pattern that is not noted in the general community. Studies of children in prolonged detention (more than two years) found that all children were diagnosed with at least one psychiatric disorder and 80% were diagnosed with multiple disorders. There was a 10-fold increase in total number of diagnoses found during the period of detention compared to pre-existing rates (Mares and Jureidini, 2004; Steel et al., 2004). The holding of children in detention centres raises issues of child protection, as children are also at risk of harm due to their enforced proximity to potentially dangerous adults.[79]

6.85 HREOC concluded that the only effective way to address the mental health problems caused or exacerbated by detention is to remove the children from that environment.[80]

Systemic factors that contribute to poor mental health care

6.86 There were a range of systemic factors that submitters and witnesses referred to, based on their direct experience of working in detention centre or with detainees. It

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77 Ms Nina Boddenberg, *Submission 32*, p. 1; Strathalbyn Circle of Friends 22, *Submission 69*, p. 5; Ms Annette Shears and Ms Peta Anne Molloy, *Submission 105*, p. 1; HREOC, *Submission 199*, pp 7-8.

78 HREOC Report, *A last resort* (April 2004), pp 12-16.

79 RANZCP, *Submission 108*, p. 2.

80 HREOC Report, *A last resort* (April 2004), quoted in *Submission 199*, pp 7-8.

was argued that detention itself separates detainees from mainstream services and the outsourcing of immigration detention exacerbates the problem:

> The RANZCP believes that the subcontracting of detention, which produces a separation of the mental healthcare of detainees from the mainstream mental health system, is a key factor in the deficient treatment of mental illness in detention centres. At present, there is no formalised arrangement between the detention centres and state mental health services. It can be very difficult to find appropriate treatment for mentally ill detainees, particularly in area mental health services already stretched to capacity.[81]

6.87 Dr Newman said the lack of clear arrangements between the Commonwealth and State mental health service:

> has contributed … to what we would consider on clinical grounds to be an inordinate delay in getting people to an appropriate mental health facility for the treatment that they need.[82]

6.88 SSTAR told the Committee that requests to provide an independent psychiatric examination:

> are frequently met with the assertion that internal services are adequate and there is no need for independent assessment or intervention. Visiting professionals are treated with suspicion instead of as a valuable resource integral to the overall care and support of detainees.[83]

And that treatment recommended by independent mental health professionals are not always implemented. For example, Dr Louise Newman, commented that she had been:

> …particularly concerned on recent visits about the persistent lack of recognition of the seriousness of people's mental distress and mental disorder. There was the case of a man I assessed as having a psychotic depression, who has also been assessed by other psychiatrists. We were of the opinion that this man needed to be transferred to a psychiatric hospital, and that had not been acted on. He remained in a very distressed state and was being treated with medication with very inadequate psychiatric review.[84]

6.89 Mr Guy Coffey, a clinical psychologist who conducts psychological assessment of detainees at the Maribyrnong Immigration Detention Centre said there are a number of reasons for not implementing recommendations, including:

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81 RANZCP*, Submission 108*, p. 3.

82 *Committee Hansard* 27 September, p. 24

83 STTARS, *Submission 138*, p. 4. Similar findings were made by Companion House in relation to the mental health of refugees who had been released from detention and whom they had assisted. Companion House, *Submission 141*, pp 1-3.

84 *Committee Hansard*, 27 September 2005, p. 21.

- the facility may not have the expertise to implement the recommendation or the detention environment may make certain treatments unimplementable;
- psychological and psychosocial treatments are difficult to implement in detention because, even if the expertise is available (and often it is not), the environment is often an insuperable barrier to the provision of such treatment;
- recommendations with regard to pharmacological treatments are more readily implemented.[85]

6.90 The committee was especially alarmed to hear those suffering from serious mental illness are the least likely to be released from detention:

> Recommendations least often followed in my experience related to opinions that the detained person can not be treated in the detention environment, and that therefore considerations should be given to releasing the individual on a bridging visa (under s 2.20(9) of the migration regulations). The grounds whereby this refusal to act on such an opinion are opaque. The practical operation of this provision requires urgent examination.
>
> Seriously mentally ill individuals have in my experience been left to deteriorate over months and years in disregard of expert opinion regarding the damaging effect that ongoing detention is having.[86]

6.91 The Asylum Seekers Resource Centre alleged that the Department had not disclosed and had actually hidden independent medical reports, which recommended the release of asylum seekers on the ground that they cannot be cared for in detention, in order to prevent the granting of a bridging visa and their release. They claimed the Department had consistently ignored reports they had submitted from independent, respected psychiatrists and psychologists expressing grave concerns for the mental health of asylum seekers.[87] The committee is unable to test these particular claims. However, the evidence is consistent with the systemic problems identified by Mr Palmer in the case of Cornelia Rau.

6.92 It also points to the importance of the development in Australia of statutory obligations for reasons in administrative decision making. This is particularly so in the immigration detention context where, by reason of their incarceration, detainees are particularly vulnerable to the influence of irrelevant considerations and unreasonable decision making. The committee considers that this is area in which unfettered executive discretion is a significant legislative gap. The exercise of ministerial discretion and the implementation of bridging visas are discussed in Chapters 4 and 8.

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85 Mr Guy Coffey, *Submission 81*, p. 4.

86 Mr Guy Coffey, *Submission 81*, p. 4.

87 ASRC, *Submission 214*, p. 30.

Use of behavioural management techniques

6.93 The use of behavioural management techniques was raised repeatedly during the inquiry. This model was criticised as inconsistent with best medical practice and harmful, especially to detainees with emotional and psychological problems. The RANZCP said:

> The use of inappropriate behavioural management techniques, including solitary confinement, is of great concern to the RANZCP. These techniques are not considered to be standard treatment of behavioural disturbance resulting from mental illness, and are not acceptable to international psychiatric bodies. Brief uses of low stimulus environments are only used as part of overall comprehensive treatment of mental illness. The use of antipsychotic medications for behavioural control is inappropriate. We are also concerned that the environment of the detention centre creates a culture which perceives disturbed behaviour as deliberately disruptive, rather than a symptom of illness.[88]

6.94 Dr Jureidini argued that the 'behaviour management' is demeaning and an affront to human dignity. He gave an example of a man, who had permission to get married in the visitors centre, being deprived of the right to have guests and music at his wedding.

> What was particularly demeaning was that it was still a number of weeks between then and the time that the man was to get married and he was told that, if he was a good boy, he could earn back guests to his wedding at the rate of two or five a week, or something like that. An environment in which that level of capricious – I think sadistic – demeaning of somebody … can never be described as a therapeutic environment.[89]

6.95 When asked about the effect of the recent upgrade in visitor and recreational facilities at Baxter would have on the mental health of detainees, Dr Jureidini said:

> It is self-evidently completely useless to somebody who has already been badly damaged by what has happened. Having a different visitors facility when you are not capable of engaging with any other human being is not going to do you much good. Having sports facilities when you cannot rouse yourself from your room more than once a day to limp off to get something to eat is not going to be of any benefit to you.[90]

Use of medication for behaviour control

6.96 The Committee also heard reports of the use of sedating medication for behavioural control. During a committee hearing Dr Newman said:

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88 *Committee Hansard* , 27 September, 2005, p. 21.

89 *Committee Hansard*, 26 September 2005, p. 40.

90 *Committee Hansard*, 26 September 2005, p. 42.

> Our group has made submissions to the Health Care Complaints Commission in New South Wales regarding the inappropriate use of medication in Villawood. Similar concerns have been raised about the use of psychotropic medications in other detention environments. There are several issues. There is no doubt that some of the people do need medication and are being appropriately treated. However, the issue is more about the use of sedating medications, or antipsychotic medications being used inappropriately for the purpose of behavioural control, and about some individuals being threatened with the use of extremely sedating medication when they have been involved in any form of protest or conflict with the management of the centres, which we believe is inappropriate.

6.97 Recent media reports of the case of Virgina Leong, a Malaysian woman detained in Villawood for three years with her child, illustrates the problem about the forced use of medication. In June 2005, the Australian reported that videotape evidence depicts Ms Leong being forcibly removed from the roof of Villawood, where she was staging a protest against her detention, and removed to a management unit:

> Leong, a slight built woman hardly larger than a child, was dragged along with her head held down by two large detention centre officers. When they reached the management unit Leong was pushed face down on the floor and a male officer about twice her size sat astride her, tightly holding her hands behind her back as a nurse instructed Leong, who was crying, to take Valium … The video shows a distressed Leong calling out: 'I don't want the Valium'.[91]

6.98 The committee is not aware whether this incident was reported to DIMA under the requirements of the contract. However, cases like the Leong matter raise serious issues about training of detention centre staff, assault and breach of medical ethics. The use of force and sedation for behaviour control requires further independent investigation.

Reform of mental health care in Australian immigration detention centres

6.99 DIMA advised the Committee that it was currently implementing changes in mental health care in response to the Palmer Inquiry report. These changes include:

- fortnightly visits by a psychiatrist to the Baxter IDC;
- the establishment of two new psychiatric nursing positions at the Baxter IDC to achieve 7 day coverage and on-call arrangements at night;
- routinely seeking additional third party medical advice whenever it receives conflicting medical opinions from sources other than the medical professionals subcontracted by GSL, rather than on a case-by-case basis as was previously the case; and

91 Elisabeth Wynhausen, *At the mercy of private guards,* Weekend Australian, 11 June 2005, p 22.

- improved access to health care outside detention centres and reviewing monitoring and oversight arrangements for health care services. DIMA is accessing further specialist medical expertise to assist it in these processes.[92]

6.100 The Committee was further advised that since January 2005, all immigration detainees are screened for physical and mental health issues when they are received at an IDF. This involves a suicide and self-harm assessment undertaken by a Detention Service Officer and an 'at risk' assessment by the nurse.[93]

6.101 In relation to Baxter, the Department advised that:

> A voluntary client-rated Kessler 10 screening is undertaken, a clinician-rated health of the nation outcomes scale is undertaken and a mental state examination is undertaken. These last three examinations are widely used in mainstream mental health services.[94]

6.102 DIMA told the committee that if a detainee screens positive on a 'HoNOS, K10 or MSE instrument' he or she will be referred to a multidisciplinary mental health team for diagnosis, a mental health management plan and ongoing mental health care.[95] If the management plan requires inpatient treatment this will be arranged through 'clinical pathways developed with identified public and private sector health providers' and the all detainees will be re-screened at 90 days.[96]

6.103 DIMA also advised that the Department has received a costed proposal from GSL to 'enhance mental health services at all other immigration detention facilities in line with the current and planned process at Baxter IDF.'[97]

6.104 In relation independent medical opinions, DIMA informed the committee that it was developing a detailed protocol and that interim procedural arrangements applied to GSL and its subcontractors are in place (see Annexure X).

6.105 The reforms currently being implemented by DIMA were acknowledged by many witnesses. But overall access to independent medical opinion and services and independent oversight of health care was advocated if mandatory detention is to remain in place.

6.106 The RANZCP argued that psychiatrists employed by detention centre management have a conflict of interest and that patients may perceive them as being aligned with the detaining authorities which could impact on their effective treatment.

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92 DIMA, *Submission 205*, p. 48.

93 Response to Question on Notice given 11 October 2005.

94 *Committee Hansard*, 11 October 2005, p. 30.

95 Response to Question on Notice given 11 October 2005.

96 Response to Question on Notice given 11 October 2005.

97 Response to Question on Notice given 11 October 2005.

The RANZCP recommended that the mental health care of detainees be provided by mainstream mental services, independent of DIMA and detention centre management.[98] The LIV also argued that responsibility for mental health should be devolved to State mental health authorities:

> DIMA is not the appropriate government agency to have ultimate responsibility for the health care needs of mentally ill or incapacitated immigration detainees. The shocking circumstances of Ms Rau's ten-month period of immigration detention clearly demonstrate this point.[99]

6.107 RANZCP recommended that standards of care applying to mental health services generally must apply in immigration detention:

> Systems must be set in place to ensure that detainees suffering psychiatric symptoms are adequately assessed and treated for the inevitable mental health problems that will arise. At a minimum, independent review panels of clinicians must be established to assess detainees for mental illness, and assessments must be conducted regularly. Responsibility for such panels should be assigned to state mental health services to ensure their independence. If a person is found to be mentally ill, he or she must be removed from detention to an appropriate place of treatment. [100]

6.108 Similarly, RASSA argued that 'detainees should have full and unrestricted access to independent mental health professionals and accorded proper medical treatment.'[101]

> Detention centres are an unsuitable location for treatment. Psychiatric illness requires an appropriate treatment environment, trained nursing and mental health staff, and a comprehensive biopsychosocial treatment approach. The immigration detention centre does not have adequate mental health staff, appropriately-trained supervisory staff, or adequate capacity to review and monitor biological treatments.

6.109 The NSW Refugee Health Service suggested that national guidelines on the health care needs of refugees are necessary. They suggested that a National Refugee Health Committee comprised of 'health professionals with expertise in the health of humanitarian entrants and with knowledge of the public health systems in Australian states and territories' could develop the guidelines in consultation with DIMA and Commonwealth and State health services.[102]

6.110 A Just Australia also argued that health standards 'should be monitored by an oversight body independent of the Department, with the power to impose penalties for

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98 RANZCP, *Submission 108*, pp 3-4.

99 LIV, *Submission 206*, pp 26-27.

100 RANZCP, *Submission 108*, p. 3.

101 RASSA, *Submission 51*, p. 6.

102 South Sydney West Area Health Service, *Submission 209*, p. 7.

breaches.'[103] RANZCP said it was disappointed with the Palmer Inquiry recommendation to establish another ministerially appointed committee of medical representatives:

> We had previously made recommendations about having an independent clinician run group to overview health standards and to look at issues about quality assurance within the detention environment, possibly now incorporating people in various forms of community detention. Our original proposal was made some time ago now. I believe it was to Minister Ruddock at the time. There was an agreement across the medical colleges and the AMA that representatives from those clinical groups who needed to be represented - psychiatrists, paediatricians, physicians, public health and so on - could form such a committee. It would be very happy to work with the Commonwealth on the issues and to report to the minister but should fundamentally be appointed by the medical colleges.[104]

6.111 DIMA argued that immigration centres are subject to regular scrutiny from external agencies, such as Parliamentary Committees, HREOC, the Commonwealth Ombudsman, the Australian National Audit Office, the United Nations High Commissioner for Refugees and the Immigration Detention Advisory Group, to ensure that immigration detainees are treated humanely, decently and fairly.[105]

6.112 However, the Committee notes that none of these bodies has the power to make binding decisions in relation to particular cases or a specific mandate to oversee the provision of mental health care. During the hearings it was also pointed out that State authorities with responsibility for mental health do not have a statutory right of access to detainees under the Migration Act.

> …. neither the Public Advocate nor mental health agencies in each State had a right to access detainees held under the Migration Act regardless of the fact that the provision of mental health services and guardianship law fall under the jurisdiction of State governments.[106]

6.113 The opening of immigration detention centres to State authorities and the involvement of mainstream and specialist mental health services would ensure independent delivery of services.

Committee view

6.114 The committee was impressed by the depth and breadth of experience and expertise evident among witnesses and the quality of evidence they submitted to the inquiry. The issue of the mental health effects of prolonged and indeterminate immigration detention emerged as the most critical aspect of Australia's mandatory

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103 A Just Australia, *Submission 184*, pp 13-14.

104 *Committee Hansard*, 27 September 2005, p. 29.

105 DIMA, *Submission 205*, p. 49.

106 LIV, *Submission 206*, p. 26.

detention policy. There is a significant and credible body of evidence that prolonged and indeterminate immigration detention results in an unacceptable rate of psychological harm in the detainee population. Evidence also demonstrated that asylum seekers and those seeking protection on humanitarian grounds, including children, are most at risk. The committee therefore concludes that prolonged and indeterminate immigration detention is inherently harmful to psychological wellbeing and its abolition should be a priority.

6.115 The systemic problems associated with the delivery of health care, in particular mental health care, in an immigration detention centre environment may be alleviated by introducing reforms to improve access to high quality health care under independent supervision. However, the fundamental issue is the length of detention and the nature of the immigration detention environment.

6.116 There is a significant body of evidence from a wide range of well qualified witnesses that the provision of mental health care within immigration detention centres is systemically flawed and below acceptable community standards. While the reforms proposed and attested to by DIMA demonstrate a willingness to improve the quality of mental health care, it does not address the fundamental issue. The committee considers that addressing the fundamental cause – prolonged and indefinite detention – will help to address many of the most intractable problems.

6.117 Expert witnesses advocated the unimpeded access by external qualified medical practitioners to immigration detainees; the provision of mental health care by established mainstream mental health services; and the development of specific standards of care and oversight of those standards by the profession. If mandatory detention involving prolonged periods of detention remains, that such substantial reform will be required to guarantee a detainees right of access to appropriate, good quality health services.

Poor food

6.118 Several concerns were expressed about the food provided to detainees. It was claimed that not only has the food been of poor quality but in some instances, unfit for consumption.[107] It was also claimed that the food provided did not take account of detainees' religious and cultural backgrounds. On some occasions the quality of the food had provoked demonstrations by detainees resulting in some detainees being placed in one of the 'punishment units'.[108]

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107 Ms Margaret McGregor, *Submission 20*, p. 1; Mr Jamal A Daoud, *Submission 85*, p. 5; Ms Margaret Tonkin, *Submission 96*, p. 1; Great Lakes Rural Australians for Refugees, *Submission 150*, p. 3; Ms Joan Nield, *Submission 152*, p. 4.

108 Sister Jane Keogh, *Submission 34*, pp. 2-6; Ms Rosalind Berry, *Submission 137*, pp 6-7.

6.119 It was claimed that two pregnant detainees had found it difficult to obtain the food they needed during their pregnancy.[109]

6.120 Often people visiting detainees bring food items for them which supplements that provided by GSL. Ms Joan Nield stated that when she started visiting detainees at Baxter Immigration Detention Centre, bringing of food into the Centre was prohibited. This restriction has been lifted and visitors are allowed to bring full meals to detainees.[110]

6.121 On 12 September 2005 the Minister issued a media release on the findings of an independent review into food at the Baxter Immigration Detention Centre.[111] The review was commissioned by DIMA in response to ongoing complaints by detainees about the food at Baxter.

6.122 Under its contract with DIMA, GSL is required to provide detainees with good quality, nutritional food that is interesting, appealing and culturally appropriate. The Minister expressed disappointment that the review had found that 'not all of the required food standards at Baxter have been met.'

6.123 The Minister stated that the review had made a number of recommendations, many of which have already been implemented. These include greater menu choice, some self-catering, including regular barbeques, and increased opportunities for detainees to have a say on food. The Minister went on to say that she recognised that 'Food has a substantial impact on the morale of detainees and as such I have instructed my department to quickly assess and introduce changes that go above and beyond the recommendations made.' She also said that she had instructed her department to work with GSL to make all of the necessary changes.

6.124 The Minister said the Palmer Report had also made recommendations to improve food services at Baxter, particularly to allow greater independence and variety in food. As part of the general review of the contract between DIMA and GSL recommended in the Palmer report, DIMA is to consider whether any amendments are needed to the descriptions and standards for food services in the contract.

Committee view

6.125 The committee acknowledges the efforts being made to improve the food services for detainees at the Baxter Immigration Detention Centre. However, these improvements must not be restricted to Baxter but must apply to all immigration detention centres. In addition, there needs to be considerable improvement in the monitoring of and reporting on these services to ensure that the standards are being met as this has clearly not been the case in the past.

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109 Ms Margaret McGregor, *Submission 20*, p. 1.

110 Ms Joan Nield, *Submission 152*, p. 4.

111 http://www.minister.immi.gov.au/media_releases/media05/v05111.htm

Detention costs

6.126 Section 209 of the Migration Act provides that a non-citizen who is detained is liable to pay the Commonwealth the costs of his or her detention. Criticism was levelled at the imposition of costs particularly in relation to an asylum seeker's detention.[112] It was said that not only are asylum seekers unlikely to have access to funds to meet these costs but until the debt is paid various restrictions are imposed, including the prevention of that person returning to Australia.

6.127 The LIV said that:

> The Australian Government's mandatory detention policy comes at a high financial cost to persons detained in immigration detention, particularly, those persons within a family unit or detained for a significant period of time. Detention costs, if not repaid to the Government, may effectively prevent a person from returning to Australia, even in situations where they may have close family ties in Australia. The LIV also notes that a number of former detainees, who were eventually granted a temporary or permanent visa, have been forced to repay their detention costs. In some cases, this has meant a debt of more than $50,000, which is a major hurdle for a person seeking to rebuild their life in the Australian community. We suggest that it is not appropriate for an Australian permanent resident to be forced to pay such costs.
>
> The LIV recommends that immigration detainees should not be charged the costs of detention. Alternatively, detainees who are subsequently granted a temporary or permanent visa should not be liable for the costs of their detention.

6.128 The St Vincent de Paul Society commented that:

> The policy of charging detainees for the cost of detention needs to be managed very carefully with due regard for the individual circumstances of each case. If an individual has been detained without cause, or has become illegal due to circumstances beyond their control (such as the visa being cancelled en-route) the Society does not feel it is appropriate to charge the individual for the cost of their detention.

6.129 Accordingly they recommended that 'individuals in these circumstances not be charged the costs of their own detention and that a cap or limit be placed on the amount of debt that individuals can incur while in detention, as some bills are so large as to be beyond any reasonable capacity for individuals to pay.

6.130 Ballarat Refugee Support Network said that while they:

> are aware of an administrative decision that, for those on TPVs, detention debts are to be waived … there are other asylum seekers who have achieved release from detention in other ways eg. a permanent visa as a refugee, and

112 Ballarat Refugee Support Network, *Submission 52*, p. 5; Ms Meryl McLeod, *Submission 56*, p. 3; St Vincent de Paul Society, *Submission 147*, p. 3; LIV, *Submission 206*, p. 18.

> who have been presented with a bill for the accommodation costs of their years in detention. An Iranian asylum seeker known to us, spent 41/2 years in detention and finally was released on a spouse visa. He has a bill for over $220,000. He must begin to pay this account if he seeks permanent residency in this country. It is a serious injustice to charge for accommodation in Australian detention centres.[113]

6.131 In relation to a question from the Committee on detention debts, Ms Lyn O'Connell, First Assistant Secretary, Detention Services Division in DIMA advised that:

> The amount billed during the 2004-05 financial year for detention debts was just over $30 million – $30,860,000. In terms of the number of people that it applied to, approximately 4,600 people were billed with respect to that debt. In terms of the payments received during that period, they amounted to just over $1 million – $1,197,000 – during that financial year in relation to those detention debts.[114]

6.132 Perhaps unsurprisingly the success rate in relation to long term debts, 'The success rate after the person has left the country is very remote.'[115]

Committee view

6.133 The evidence clearly indicates that the imposition of detention costs is an extremely harsh policy and one that is likely to cause significant hardship to a large number of people. The imposition of a blanket policy without regard to individual circumstances is inherently unreasonable and may be so punitive in some cases as to effectively amount to a fine. The committee agrees that it is a serious injustice to charge people for the cost of detention. This is particularly so in the case of unauthorised arrivals, many of whom have spent months and years in detention. The fact that this policy has been implemented in the context of a mandatory detention policy makes it all the more egregious. It is unclear exactly what pressing social need the policy addresses or how it can rationally be sustained and the committee therefore recommends that it be abolished and all existing debts be waived.

Recommendation 44

6.134 The committee recommends that there be a presumption against the imposition of a liability to pay the Commonwealth for the cost of detention, subject to an administrative discretion to impose the debt in instances of abuse of process or where applicants have acted in bad faith.

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113 Ballarat Refugee Support Service, *Submission 52*, p. 5.

114 *Committee Hansard*, 11 October 2005, p. 18.

115 *Committee Hansard*, 11 October 2005, p. 18.

Alternative approaches to mandatory detention

6.135 In chapter 5 the committee expresses its view that it is now timely to consider alternative options to the mandatory detention of unlawful non-citizens, especially asylum seekers. During the course of the inquiry a number of alternative models were presented to illustrate how one might comprehensively address the question of how asylum seekers can be better catered for, while maintaining the integrity of the migration program.

6.136 For example, the National Council of Churches in Australia (NCCA) recommended 'The adoption of a community release scheme, open to all asylum seekers (unless there are strong, justifiable reasons to continue detention), based on adequate case management and proper entitlements, namely work rights, Medicare and supplementary income support, if required.'[116]

6.137 Amnesty International took a similar approach and recommended that the government should:

> **establish** a formal independent review process to assess on a case by case basis the necessity and proportionality of detention of all asylum-seekers and rejected asylum-seekers who are currently detained in Australia, including Christmas Island, and on Nauru.
>
> **ensure** that in future, asylum-seekers who arrive in Australia without adequate documentation are detained only when their detention is consistent with international human rights standards. Such legislation should be based on a general presumption against detention.
>
> **specify** in national law a statutory maximum duration for detention which should be reasonable in its length. Once this period has expired the individual concerned should automatically be released.
>
> **ensure** that detained asylum-seekers have regular and automatic access to courts empowered to review the necessity of detention and to order release if continued detention is found to be unreasonable or disproportionate to the objectives to be achieved.
>
> **establish** a new class of bridging visa for any future arrivals that allows for asylum-seekers to remain in the community with rights and entitlements as outlined above.
>
> **implement** a *complementary protection* model to provide for future asylum seekers who do not meet the full and inclusive interpretation of the definition of refugee under the Refugee Convention but nonetheless are in need of international protection.

6.138 Justice for Asylum Seekers (JAS) and the Brotherhood of St Laurence advocated the Reception and Transitional Processing System (RTP), as a viable alternative. Some of key features of the proposal include:

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116 National Council of Churches, *Submission 179*, p. 19.

1. Detention should only be used for a limited time, in most cases for Identity, Health and Security (IHS) checks upon arrival; prior to a person being returned to their country of origin or another country, or if a claim is unsuccessful and if supervision in the community is inadequate to the high risk of the person absconding.

2. Introduction of a monitored release regime based on a revised risk assessment – made into community hostels/cluster accommodation.

3. Those deemed high security risk to remain in detention, but with set periods of judicial or administrative review.

4. Ensuring children and their primary carers are released from detention as soon as possible.

5. Reception of all unaccompanied minors, families, single women, vulnerable people into community care with Government support and compliance requirements.

6. Reception of all people assessed to be psychologically vulnerable into community care by specialized services with Government support and compliance requirements.

7. Creation of a case worker system whereby an independent service provider (e.g. Australian Red Cross) provides information, referral and welfare support services to people claiming asylum, from the time of their arrival to the point of repatriation or settlement in the community.

8. Creation of a Representative Assessment Panel to oversee conditions of detention and community management. The Panel would make decisions on risk assessments, security compliance and periodically review length of detention. The Panel would act as an independent body ensuring transparency and accountability of service providers entrusted with the humane manner of treating people.

9. The introduction of a specialist service provider such as International Organisation of Migration to manage return of persons whose claim has been unsuccessful.

10. The creation of a special visa class for long term detainees who can't be returned to their country of origin, which would allow them to live in the community until such time as they can be returned.[117]

6.139 It was argued that adoption of the RTP system, or a similar approach, would not adversely effect the integrity of Australia's refugee determination system. A trial conducted by the Hotham Mission found that 85 per cent of those not found to be refugees returned voluntarily to their home country, while of the other fifteen per cent, some had returned to detention in order to have their air fare paid so that they could leave Australia.[118]

117 Justice for Asylum Seekers. *Submission* 163, Attachment A, p. 47.

118 *Committee Hansard*, 27 September 2005, p. 33.

Committee view

6.140 The committee has received a substantial body of expert testimony about the psychological harm of prolonged and indeterminate detention and the systemic problems in the management of immigration detention centres. Having considered the evidence the committee believes that the prolonged and indeterminate nature of Australia's mandatory detention policy is the key problem which must be addressed. The weight of evidence before the committee demonstrates that the consequences of mandatory detention demonstrate that immigration detention, in its present form, is unable to meet the twin of objectives of preserving the integrity of the migration program while ensuring the humane treatment of non-nationals in detention.

6.141 Against this background there must be strong reasons for continuing the policy and the practice in its present form. The committee agrees with the many witnesses who argued that comprehensive reform of Australia's mandatory policy is now essential. The government's recent commitment to reduce the number of long term detainees and, in particular, alternative detention arrangements for children and families are welcome and signify an important shift in position. However, the mandatory requirement that an 'unlawful non-national' be detained indefinitely until provided with a visa or removed from Australia remains Australian law. Release from an IDF to an alternative place of detention or under a residence determination is still a form of detention and the person remains subject to the conditions which are at the discretion of the minister.

6.142 A number of features are common to the proposals for reform:

- retention of mandatory detention for initial screening, identity, security and health checks;
- statutory time limit to periods of detention;
- effective access to independent judicial supervision of legality and merit of detention which continues beyond the initial period; and
- release into the community on a bridging visa with access to basic services and subject to reasonable reporting conditions.

6.143 Prior to the introduction of mandatory detention in 1992, judicial supervision of detention was the norm for the majority of 'unlawful non-citizens' and most people were permitted to live in the community. During the past ten years Australia has continued to permit those who arrive on short term visas and subsequently claim asylum to remain in the community – they represent the largest proportion of asylum applicants. The reforms proposed in this report are a fundamental change to the existing principle of mandatory detention, but are in fact measures which either previously or currently exist and will bring clarity and simplicity into a complex system. These reforms are directed at unauthorised arrivals.

6.144 The committee also considers that the system of complementary protection for future asylum seekers who do not meet the definition of refugee under the Refugee Convention but otherwise need protection for humanitarian reasons and cannot be

returned should be introduced. Consideration of claims under both Refugee Convention and Australia's other international human rights treaty should take place at the same time. This will significantly reduce the time spent in detention and allow existing decision making processes, including merit and judicial review to be applied simultaneously. The committee believes this is a more efficient, effective and comprehensive approach and one that is common in other jurisdictions.

Recommendation 45

6.145 The committee recommends that the Migration Act be amended to permit the mandatory detention of unlawful non-citizens for the purpose of initial screening, identity, security and health checks and that the initial period of detention be limited to up to ninety days.

Recommendation 46

6.146 The committee recommends the continuation of detention for a specified limited period should be subject to a formal process, such as the approval of a Federal Magistrate, on specified grounds and limited to situations where: there is suspicion that an individual is likely to disappear into the community to avoid immigration processes; or otherwise poses a danger to the community.

Recommendation 47

6.147 The committee recommends release into the community on a bridging visa with a level of dignity that allows access to basic services, such as health, welfare, housing and income support or work rights.